

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Biennial Review 2002)	WC Docket No. 02-313 - Biennial Review 2002 Comments
)	WT Docket No. 02-310 - Biennial Review 2002 Comments

**COMMENTS
OF THE
UNITED STATES TELECOM ASSOCIATION**

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October 18, 2002

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SUMMARY

The United States Telecom Association (USTA) is concerned that the purpose of the biennial review is not likely to be achieved because the Federal Communications Commission (Commission or FCC) has not eliminated unnecessary regulations identified in previous biennial reviews in a timely manner. USTA reminds the Commission of the statutory mandate that the Commission must aggressively eliminate unnecessary regulatory burdens on common carriers.

USTA believes that neither the report issued by the Commission to fulfill its year 2000 biennial regulatory review obligations¹ nor the recommendations of Commission staff detailed in the 2000 Biennial Regulatory Review Updated Staff Report released concurrently² provided adequate changes to the rules. Therefore, USTA recommends the following rules changes to eliminate unnecessary regulation:

Part 1. Limit the time to consider waiver requests and petitions for reconsideration to one year. If such filings are not denied within one year, they should be deemed granted.

Part 1, Subpart J. Streamline the pole attachment rules contained in Subpart J in accordance with USTA's comments in the 2000 Biennial Review.

Part 20, Section 20.11. Deny requests to expand the rules to require reciprocal compensation to CMRS providers for the traffic sensitive elements of their mobile network to switch or terminate local traffic to mobile customers, which originates on another carrier's network. Incorporate subsidiary intercarrier compensation issues into the broader Intercarrier Compensation proceeding.

Part 32. USTA continues to support substantial reduction in the FCC's accounting requirements and urges the FCC to move forward with the FCC's Phase III accounting proceeding.

Part 42. Eliminate this section, except for Sections 42.10 and 42.11, which should be moved to Part 61.

Part 43. Eliminate the ARMIS reports, or, in the alternative, continue to significantly streamline the network reports as previously recommended by USTA.

¹ *The 2000 Biennial Regulatory Review*, CC Docket No. 00-175, Report (rel. Jan. 17, 2001) (FCC Report).

² *Biennial Regulatory Review 2000*, CC Docket No. 00-175, Updated Staff Report (Jan. 17, 2000) (Staff Report).

Part 51. Resist any effort to apply these rules to ILEC provision of advanced services and encourage the Commission to move forward with the Triennial Review.

Part 52. Adopt a cost recovery mechanism for local number portability costs borne by non-LNP capable carriers.

Part 53. Delete Sections 53.203(a)(2) and 53.203(a)(3), which contain separate affiliate requirements that prevent BOCs from offering consumers seamless, end-to-end service.

Part 54. Remove the requirement that service providers reimburse USAC for payments or commitments made to ineligible entities for payments made for eligible services used in an ineligible manner and refrain from revising the universal service definition. Clarify data collection requirements for ICLS funding.

Part 61. Restructure Part 61 to include only tariff requirements and move the rules associated with price cap regulation to a new Part XX and the rules associated with rate of return regulation to Part 69. Permit all ILECs to file contract-based tariffs. Ensure that the tariff filing requirements are consistent with Section 204(a)(3) of the Act. Streamline the notice period to file corrections and extend the special permission period.

Part 64, Subpart A. Delete this Subpart.

Part 64, Subpart C. Delete this Subpart.

Part 64, Subpart E. Delete this Subpart.

Part 64, Subpart G. Delete this Subpart since all providers, except ILECs, are permitted to bundle enhanced services.

Part 64, Subpart H. Delete this Subpart.

Part 64, Subpart I. Move toward eliminating this Subpart and revise the purpose and recent efforts sections of the Staff Report.

Part 64, Subpart T. Eliminate the requirement that independent ILECs provide interexchange service through a separate affiliate.

Part 65. Eliminate reporting requirements except when a lower formula adjustment is filed and exclude services that are not subject to price cap regulation. Modify Section 65.700 to calculate the maximum allowable rate of return on all access elements in the aggregate and modify Section 65.702 to measure earnings on an overall interstate basis.

Part 69. Revise this section so that it only applies to rate of return carriers and eliminate the detailed rate element codification and public interest petition requirement.

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**COMMENTS
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USTA respectfully submits its comments in the above-referenced proceeding.³ USTA is the nation's oldest trade association for the local exchange carrier (LEC) industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks. USTA's members believe that in order to promote fair and efficient competition in the converging, global communications marketplace, the Commission must carry out the deregulatory mandate set forth in Section 11 of the Communications Act of 1934, as amended, (Act) and Section 202(h) of the Telecommunications Act of 1996 (1996 Act) by aggressively eliminating regulations identified in the review process as "no longer necessary in the public interest as the result of meaningful economic competition between providers of telecommunications service."⁴

³ USTA incorporates by reference into the record of this proceeding its Petition for Rulemaking regarding the 2000 Biennial Regulatory Review, which was filed August 11, 1999 and its comments in the Biennial Review 2000, which were filed October 10, 2000. *See United States Telephone Association Petition for Rulemaking – 2000 Biennial Regulatory Review*, CC Docket No. 00-175, RM 9707, Petition for Rulemaking of the United States Telephone Association (Aug. 11, 1999) (USTA Petition) and *Biennial Review 2000*, CC Docket No. 00-175, Comments of the United States Telecom Association (Oct. 10, 2000) (USTA Comments).

⁴ 47 U.S.C. § 161; Telecommunications Act of 1996, Pub. Law No. 104-104, § 202, 110 Stat. 56 (1996).

I. THE 2002 BIENNIAL REGULATORY REVIEW

On September 26, 2002, the Commission issued several *Public Notices* requesting comment on the Commission's rules pursuant to the 2002 Biennial Review.⁵ While USTA recognizes the challenges of the statutory requirement that the Commission review its rules every two years, it continues to believe that there are many advantages to the review. As Commission staff has acknowledged, market forces are likely to yield better economic results than regulation. Eliminating unnecessary regulation reduces regulatory costs, freeing up capital for investment in valuable infrastructure and permitting carriers to serve customers more cost effectively.

USTA continues to be concerned about the Commission's failure to modify or eliminate regulations identified in the biennial review process in a timely manner.⁶ Rules identified as unnecessary or in need of modification often continue to operate in their current form, to the detriment of the public. For example, the Commission's recent moratorium⁷ on the Phase III accounting and reporting review proceeding places an enormous burden on large incumbent local exchange carriers (ILECs), which must continue to provide voice and data service to the public anywhere and at any time. The Commission has taken a piecemeal approach through independent rulemakings to eliminating unnecessary regulation identified in the biennial reviews. This piecemeal approach results in unnecessary rules remaining in effect for much longer than they should. Congress did not intend for the Commission to identify unnecessary

⁵ USTA's comments respond to two of these *Public Notices*. See *Public Notice*, The Commission Seeks Public Comments in 2002 Biennial Review of Telecommunications Regulations Within the Purview of the Wireline Competition Bureau, WC Docket No. 02-313, FCC 02-267 (rel. Sept. 26, 2002) and *Public Notice*, The Commission Seeks Public Comments in 2002 Biennial Review of Telecommunications Regulations Within the Purview of the Wireless Telecommunications Bureau, WT Docket No. 02-310, FCC 02-264 (rel. Sept. 26, 2002).

⁶ See USTA Comments at 2.

⁷ See *Resolution Seeking Termination of the Federal Communications Commission's Further Notice of Proposed Rulemaking in CC Docket No. 00-199, 2000 Biennial Regulatory Review, and the Establishment of a Federal-State*

rules every two years, never to actually eliminate them.⁸ Rather, Congress imposed on the Commission a statutory obligation to aggressively look for opportunities to eliminate unnecessary regulatory burdens.

In order to assist the Commission in fulfilling its obligation to eliminate unnecessary regulation, USTA recommends that the Commission institute a process under which any rule identified for elimination in a biennial regulatory review would automatically sunset within 90 days unless the Commission is petitioned to retain the rule.⁹ The burden would be on the petitioning party to justify retention of the rule. In addition, USTA urges the Commission to require rulemaking proceedings to be initiated and completed within 90 days after a rule has been identified for modification in a biennial regulatory review. Such deadlines for Commission action would ensure that the results of a biennial regulatory review are enacted in a timely manner consistent with the deregulatory, pro-competitive intent of the biennial review requirement.

Joint Conference, Sponsored by the Committee on Finance and Technology, adopted by the NARUS Board of Directors on July 31, 2002.

⁸ See 141 Cong. Rec. S7881, June 7, 1995. (Section 11 “establishes a process that will require continuing justification for rules and regulations every two years. Every two years, in other words, all rules and regulations will be on the table. If they don’t make sense, there is a process established to terminate them.”)

⁹ See USTA Comments at 3.

II. RULE PART ANALYSIS

PART 1 – PRACTICE AND PROCEDURE

USTA continues to recommend that the Commission modify its procedural rules that would allow the Commission to resolve waiver requests and petitions for reconsideration within one year.¹⁰ Accordingly, any filing that the Commission does not deny within a year should be deemed approved.

¹⁰ See USTA Comments at 6.

PART 1, SUBPART J – POLE ATTACHMENT COMPLAINT PROCEDURES

USTA continues to recommend that the Commission streamline the pole attachment rules contained in Subpart J.¹¹ In the *Consolidated Partial Order on Reconsideration* in the Pole Attachment proceeding,¹² USTA stressed the importance of streamlining the pole attachment rules, as it initially did in this proceeding. In both proceedings, USTA sought specific changes to the calculation of the pole attachment methodology and complaint procedures. USTA encourages the Commission to reconsider these arguments in this proceeding.

¹¹ See USTA Comments at 7.

¹² See *Amendment of Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, CS Docket Nos. 97-98 and 97-151, Consolidated Partial Order on Reconsideration, FCC 01-170 (rel. May 25, 2001).

PART 20, SECTION 20.11 – INTERCONNECTION TO FACILITIES OF LOCAL EXCHANGE CARRIERS

USTA recognizes that the Intercarrier Compensation proceeding¹³ is still under review by the Commission. Given that this proceeding is still ongoing and that USTA's concerns raised in the 2000 Biennial Review have not been resolved, USTA renews the comments it filed on this part and section in the 2000 Biennial Review proceeding.¹⁴ USTA adds that the Commission should incorporate any subsidiary intercarrier compensation issues, such as those raised in a recently released *Public Notice* on intercarrier compensation for wireless traffic,¹⁵ into the ongoing broader Intercarrier Compensation proceeding. This will allow for a more efficient handling of all intercarrier compensation issues.

¹³ *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking (rel. Apr. 27, 2001) (Intercarrier Compensation).

¹⁴ See USTA Comments at 10.

¹⁵ See *Public Notice*, Comment Sought on Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic, CC Docket No. 01-92, DA 02-2436 (rel. Sept. 30, 2002).

PART 32 – UNIFORM SYSTEM OF ACCOUNTS

USTA continues to support a substantial reduction in the Commission's accounting requirements.¹⁶ The Commission recently took the requisite steps to review the accounting regulations in issuing its Further Notice of Proposed Rulemaking - Phase III of CC Docket Nos. 00-199 and 99-301.¹⁷ USTA urges the Commission to move forward with the its Phase III accounting proceeding and, in particular, to eliminate unnecessary regulations as set forth in comments previously filed by several ILECs.¹⁸

¹⁶ See USTA Comments at 13.

¹⁷ *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers*, CC-Docket Nos. 00-199, 99-301 and 80-286, Further Notice of Proposed Rulemaking, 16 FCC Red 19911 (2001) (Phase III).

¹⁸ See, e.g., *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and 3; Local Competition and Broadband Reporting*, CC Docket Nos. 00-199 and 99-301, Joint Comments of BellSouth, SBC, Verizon, Qwest, Frontier and CBT (Apr. 8, 2002), Reply Comments of BellSouth Corporation (May 7, 2002), Reply Comments of Qwest (May 7, 2002), Reply Comments of SBC (May 7, 2002), Reply Comments of Verizon (May 7, 2002).

PART 42 – PRESERVATION OF RECORDS OF COMMON CARRIERS

USTA continues to support elimination of Part 42, with the exception of Sections 42.10 and 42.11, as it is outdated and unnecessary.¹⁹ In addition, USTA continues to recommend that Sections 42.10 and 42.11, regarding the public availability and retention of information concerning detariffed interexchange services, be maintained, but moved to Part 61 which contains other tariff requirements, thereby eliminating the need for this part of the rules.

¹⁹ See USTA Comments at 16.

**PART 43 – REPORTS OF COMMUNICATIONS COMMON CARRIERS AND
CERTAIN AFFILIATES**

USTA continues to support streamlining of the ARMIS reporting requirements.²⁰

However, USTA still believes that the Commission's efforts would be better directed toward eliminating Part 43 because most of the reports have outlived their usefulness.

²⁰ See USTA Comments at 17.

PART 51 – INTERCONNECTION

USTA continues to recommend that the Part 51 rules should not be applied to ILEC provisioning of advanced services.²¹ The Commission has undertaken a review of its regulations involving the classification of wireline broadband services in the Wireline Broadband Access NPRM²² and the Incumbent LEC Broadband NPRM.²³ USTA supports the notion that on an elective basis, ILECs should be permitted to offer broadband services either as a private carrier or a common carrier. Carriers which elect to offer broadband services as a private carrier service should not be subject to Title II regulation. USTA urges the Commission to move forward expeditiously and revise its rules in accordance to USTA's comments in these proceedings. In order to ensure regulatory parity and effective competition in the broadband marketplace, the Commission should not apply Part 51 rules to wireline broadband services.

USTA continues to recommend that the Part 51 rules should not impose requirements on ILECs to provide collocation and unbundled network elements that would place them at a distinct competitive disadvantage in the provisioning of telecommunications services. USTA urges the Commission to move forward with the Triennial Review²⁴ and remove high-capacity loops, the high frequency portion of the loop, dedicated transport, and switching from the current

²¹ See USTA Comments at 18.

²² See *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings: Bell Operating Companies Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 02-33 and 95-20, 98-10, Notice of Proposed Rulemaking, FCC 02-42 (rel. Feb. 15, 2002) (Wireline Broadband Access NPRM).

²³ See *Review of Regulatory Requirements for Incumbent LEC Broadband Services; SBC Petition for Expedited Ruling That it is Non-Dominant in its Provision of Advanced Services and for Forbearance From Dominant Carrier Regulation of These Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, FCC 01-360, 16 FCC Rcd 22745 (rel. Dec. 20, 2001) (Incumbent LEC Broadband NPRM).

²⁴ See *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering*

unbundled network element (UNE) list, allowing the remaining UNEs to continue promoting true, facilities-based competition.²⁵

Advanced Telecommunications Capability, CC Docket Nos.01-338, 96-98, and 98-147, Notice of Proposed Rulemaking, FCC 01-361, 16 FCC Rcd 22781 (rel. Dec. 20, 2001) (Triennial Review).

²⁵ See *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos.01-338, 96-98, and 98-147, Reply Comments of the United States Telecom Association (July 17, 2002).

PART 52 – NUMBERING

USTA raises in this proceeding the concerns it raised in the 2000 Biennial Review proceeding regarding Commission adoption of a cost recovery mechanism for local number portability (LNP) costs borne by non-LNP capable carriers.²⁶ On October 15, 2002, USTA filed an *ex parte* presentation²⁷ supporting the National Exchange Carrier Association, Inc. Petition for Reconsideration,²⁸ filed on July 15, 2002, which addressed the Commission's Order on Reconsideration in Telephone Number Portability docket.²⁹ Pursuant to USTA's recommendations in that *ex parte* presentation, the Commission should permit non-LNP ILECs, whether they participate in an extended area service (EAS) plan or not, to recover their carrier-specific ongoing LNP-related costs, such as supporting regional Number Portability Administration Centers as well as N-1 query costs for intraLATA toll calls. Specifically, the Commission should allow these non-LNP ILECs to recover their actual costs, which are normal network operating costs, not implementation costs, through separations and access charge procedures. Such action by the Commission would cause LNP and non-LNP capable carriers to be treated consistently. There is no reason to permit LNP capable carriers to recover through access charges their normal network operating costs after the five-year implementation period yet to prohibit non-LNP capable carriers from recovering through access charges their normal network operating costs prior to LNP implementation. Moreover, it is appropriate for non-LNP

²⁶ See USTA Comments at 20.

²⁷ See Letter from Michael Thomas McMenamin, USTA, to William Maher, Chief, Wireline Competition Bureau, regarding Telephone Number Portability, CC Docket No. 95-116 (Oct. 15, 2002).

²⁸ See *Telephone Number Portability*, CC Docket No. 95-116, National Exchange Carrier Association, Inc. Petition for Reconsideration (July 15, 2002).

²⁹ See *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (2002) (Order on Reconsideration).

capable carrier to recover their normal network LNP-related costs through separations and access charge procedures rather than to assess end users with charges for these costs when they do not derive a direct benefit from LNP.

PART 53, SUBPART C – SEPARATE AFFILIATE; SAFEGUARDS

USTA supports immediate elimination of the Commission's Rules under Section 53.203(a)(2) and (3), which prohibit the sharing of operating, installation and maintenance functions between the Bell Operating Company (BOC) and the Section 272 affiliate.³⁰ These rules are not required by statute. Furthermore, experience has shown that the rules competitively disadvantage the BOCs and are becoming increasingly burdensome as the industry begins to deploy the next generation networks. They also deny consumers an important benefit of the Telecommunications Act of 1996: the provision of seamless, end-to-end service. Moreover, they are unnecessary because existing law provide sufficient safeguards against discrimination and cross-subsidization. Therefore, these rules should be eliminated.³¹

³⁰ See *Petition of Verizon from the Prohibition of Sharing Operating, Installation, and Maintenance Functions Under Section 53.203(a)(2) of the Commission's Rules*, CC Docket No. 96-149, Comments of the United States Telecom Association and Reply Comments of the United States Telecom Association (Sept. 9, 2002 and Sept. 24, 2002).

³¹ In the event the Commission disagrees and does not rescind these Rules, USTA urges the Commission to forbear from applying the Rules to the BOCs.

PART 54 – UNIVERSAL SERVICE

USTA renews the recommendations it made in its comments in the 2000 Biennial Review.³² In these comments USTA maintained that service providers under the Schools and Libraries program should not be required to reimburse the Universal Service Administrative Company (USAC) for payments or commitments made to ineligible entities for payments made for eligible services used in an ineligible manner. In addition, USTA maintained that collection authority should not be delegated to USAC. As this matter is still before the Commission under a Petition for Reconsideration, as well as on appeal, although stayed, in the United States Court of Appeals for the District of Columbia Circuit, it is not resolved and USTA renews its previous recommendations in this proceeding. In its comments USTA also recommended that the Commission should not alter the rules concerning the services that are included in the definition of universal service. USTA acknowledges that the Federal-State Joint Board (Joint Board) has issued a Recommended Decision on this matter, in which the Joint Board “recommends that the Commission retain the existing list of services supported by universal service” and generally concludes “that no new service satisfies the statutory criteria contained in section 254(c) of the Communications Act of 1934, as amended (“Act”), and that the public interest would not be served by expanding the scope of universal service at this time.”³³ Because the Recommended Decision must still be put out for comment, this matter is not resolved and USTA renews its previous recommendations in this proceeding.

³² See USTA Comments at 21.

³³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision (rel. July 10, 2002) (Recommended Decision). USTA notes that the Joint Board was unable to reach an agreement on whether equal access satisfies the criteria for universal service support.

USTA also supplements the recommendations it made regarding universal service matters in the 2000 Biennial Review with additional recommendations in this 2002 Biennial Review proceeding. With regard to the Commission's Rule Section 54.903, which requires Rate-of-Return (ROR) ILECs to provide certain data to USAC, USTA makes several recommendations. First, USTA recommends that the Commission make clear that carriers only need to submit six data items (*i.e.*, total revenue requirement and five revenue amounts), rather than the over 1000 data items that USAC has been considering, in order to comply with the data collection requirements for Interstate Common Line Support (ICLS) funding. The data collection forms and processes that USAC has been considering would cause ROR ILECs to be faced with significant administrative burdens that exceed those originally anticipated. Second, USTA recommends that Commission clarify that the National Exchange Carrier Association (NECA) should provide USAC with the six data items of cost and revenue necessary to calculate ICLS for NECA's pool participants. NECA, as tariff filing agent for most ROR ILECs, already collects these data items as part of its tariff filing responsibilities under Part 69 of the Commission's Rules. Directing NECA to make these data submissions to USAC would reduce the burdens on most ROR ILECs. Likewise, the Commission should clarify that NECA should provide USAC with the line count data that USAC requires. Since all ILECs, including ROR ILECs, already submit line counts to NECA for purposes of computing high cost loop amounts, directing NECA to submit line count information to USAC for its pool participants would substantially reduce collection burdens for these ROR ILECs. Third, USTA recommends that the Commission extend the date for submission of actual ICLS data for true-up purposes from July 31 to December 31. This extension would allow carriers time to complete their cost studies

in order to provide the required data. USTA, together with the National Rural Telecom Association, National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Alliance, addressed these recommendations in comments filed earlier this year regarding public information collection related to the implementation of the Commission's Multi-Association Group (MAG) Plan Order.³⁴ USTA incorporates by reference the recommendations it made to the Commission in the MAG Public Information Collection Joint Comments.

³⁴ See generally *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Public Information Collection*, CC Docket Nos. 00-256 and 96-45 and OMB Control No. 3060-0972, Joint Comments of the National Rural Telecom Association, National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, United States Telecom Association, and Western Alliance (May 17, 2002) (MAG Public Information Collection Joint Comments).

PART 61 – TARIFFS

In the USTA Petition, USTA recommended restructuring the Part 61 and Part 69 rules.³⁵ USTA suggested that Part 61 contain only carrier tariff requirements and that rules associated with price cap regulation should be moved to a new Part XX and that rules associated with rate of return regulation should be moved to Part 69.³⁶ USTA continues to maintain that this restructuring would assist in simplifying and clarifying the current rules.

USTA still holds that there are several rules that meet the statutory requirements for elimination pursuant to biennial review. USTA recommends that the Commission eliminate the price cap all-or-nothing rule³⁷ because the concerns that prompted the implementation of the “all-or-nothing” rules have not materialized and there are many other regulatory safeguards that prevent or allow detection and correction of any abuses by carriers that become affiliated either through mergers or acquisitions.³⁸ USTA continues to maintain that all ILECs should be permitted to file contract-based tariffs.³⁹ ILECs should have the same opportunity as their competitors to respond directly to customer requests. Almost every state permits some form of contract-based tariffs.⁴⁰ USTA continues to recommend that the Commission make its tariff filing requirements consistent with Section 204(a)(3) of the Act.⁴¹ In addition, USTA continues to maintain that the notice period to file corrections to tariffs should be streamlined from three

³⁵ See USTA Petition at 32; *see also* USTA Comments at 22.

³⁶ See USTA Petition at 32; *see also* USTA Comments at 22.

³⁷ See 47 C.F.R. §§ 61.41(b) and (c)(2). These rules together make up what is commonly referred to as the price cap “all-or-nothing” rule.

³⁸ See generally *Valor Telecommunications, LLC Petition for Waiver of Section 61.41 of the Commission’s Rules*, WCB/Pricing 02-26, Comments of the United States Telecom Association (Oct. 10, 2002) (Valor Petition). In the Valor Petition, USTA supported the relief requested – a temporary waiver – but also urged the Commission repeal the “all-or-nothing” rules.

³⁹ See USTA Petition at 34; *see also* USTA Comments at 22.

⁴⁰ See USTA Petition at 34.

⁴¹ See USTA Petition at 32; *see also* USTA Comments at 22.

days to one day and that there is no need for the current requirement that tariffs be in effect for 30 days before any changes can be made. Finally, the special permission period should be extended from 60 to 90 days.⁴² These changes are consistent with the establishment of a pro-competitive, de-regulatory statutory framework and should be considered as part of the Commission's biennial review of its Rules.

⁴² See USTA Petition at 36; *see also* USTA Comments at 22.

PART 64, SUBPART A –TRAFFIC DAMAGE CLAIMS

USTA continues to recommend that Part 64, Subpart A be deleted.⁴³ Because ILECs maintain records of traffic damage claims as required by the Internal Revenue Service and the Securities and Exchange Commission, there is no need for the Commission to duplicate these requirements. Commission staff has also recommended deletion of Part 64, Subpart A.⁴⁴

⁴³ See USTA Petition at 36; *see also* USTA Comments at 23.

⁴⁴ See Staff Report at 113-114.

**PART 64, SUBPART C – FURNISHING OF FACILITIES TO FOREIGN
GOVERNMENTS FOR INTERNATIONAL COMMUNICATIONS**

Because the furnishing of facilities to foreign governments for international communications could be handled contractually, consistent with applicable treaties and other federal laws, USTA renews its recommendation that Part 64, Subpart C be eliminated.⁴⁵

⁴⁵ See USTA Petition at 36; *see also* USTA Comments at 24.

**PART 64, SUBPART E – USE OF RECORDING DEVICES BY TELEPHONE
COMPANIES**

Commission staff recommended the removal of Part 64, Subpart E in the Staff Report.⁴⁶

USTA continues to support the staff's recommendation to eliminate this subpart.⁴⁷

⁴⁶ See Staff Report at 120.

⁴⁷ See USTA Comments at 25.

PART 64, SUBPART G – FURNISHING OF ENHANCED SERVICES AND CUSTOMER PREMISES EQUIPMENT BY BELL OPERATING COMPANIES; TELEPHONE OPERATOR SERVICES

USTA continues to recommend the deletion of Part 64, Subpart G.⁴⁸ The Commission has eliminated the bundling restriction that limited the ability of common carriers to offer consumers packages of telecommunications services and customer premises equipment (CPE) and has clarified but not eliminated the prohibition on bundling enhanced services.⁴⁹ USTA urges the Commission to eliminate the prohibition on the bundling of enhanced services as it has done for CPE because the prohibition is no longer necessary in a competitive environment. Every provider of telecommunications services, except the ILEC, is permitted to bundle enhanced services. Allowing ILECs to bundle products and services fosters competition thereby benefiting consumers.

⁴⁸ See USTA Petition at 37; *see also* USTA Comments at 26.

⁴⁹ *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, CC Docket Nos. 96-61 and 98-183, Report and Order, FCC 01-98 (rel. March 30, 2001).

**PART 64, SUBPART H – EXTENSION OF UNSECURED CREDIT FOR INTERSTATE
AND FOREIGN COMMUNICATIONS SERVICES TO CANDIDATES FOR FEDERAL
OFFICE**

USTA continues to recommend the deletion of Part 64, Subpart H because contracts and current state and federal laws should provide sufficient oversight.⁵⁰

⁵⁰ See USTA Comments at 27; *see also* USTA Petition at 36.

PART 64, SUBPART I – ALLOCATION OF COSTS

USTA encourages further streamlining of the allocation rules and ultimate elimination of the requirement to allocate costs between regulated and non-regulated activities. USTA believes that in a competitive environment such an allocation is unnecessary.

USTA continues to urge the Commission to streamline the Cost Allocation Manual (CAM) filing and audit requirements.⁵¹ In its Comprehensive Accounting Review, Phase 2 proceeding, the Commission eliminated the CAM filing requirements and biennial attestation requirement for mid-size ILECs.⁵² The rules still require CAM filings by ILECs having annual revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold. In addition, 47 C.F.R. 64.903(b) requires multiple CAM filings throughout the year for changes to the cost apportionment table or time reporting. Multiple CAM filings are unnecessary and should be eliminated. USTA continues to believe that the administrative burdens of multiple CAM filings for large ILECs are enormous as well as costly and, therefore, should be eliminated.

Finally, USTA continues to urge the Commission to accurately portray the purpose of Subpart I. Subpart I was not designed to implement Section 254(k) of the Act, as the Commission has stated,⁵³ but, rather, was implemented in the 1980s when all ILECs operated under rate-of-return regulation to ensure that all of the costs of non-regulated activities were

⁵¹ See USTA Petition at 39; *see also* USTA Comments at 28.

⁵² See *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2, Amendments to the Uniform System of Accounts for Interconnection, Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, Local Competition and Broadband Reporting*, CC Docket Nos. 00-199, 97-212, 80-286, 99-301, Report and Order in CC Docket No. 00-199, 97-212, and 80-286 and Further Notice of Proposed Rulemaking in CC-Docket Nos. 00-199, 99-301 and 80-286 at 5 (rel. Nov. 5, 2001).

⁵³ Staff Report at 128.

removed from the rate base and allowable expenses for interstate regulated services. It applies only to ILECs. Section 254(k) was not enacted until 1996 and it applies to all telecommunications service providers.

**PART 64, SUBPART T – SEPARATE AFFILIATE REQUIREMENTS FOR
INCUMBENT INDEPENDENT LOCAL EXCHANGE CARRIERS THAT PROVIDE IN-
REGION, INTERSTATE DOMESTIC INTEREXCHANGE SERVICES OR IN-REGION
INTERNATIONAL INTEREXCHANGE SERVICES**

USTA continues to recommend that the requirement that independent ILECs provide interexchange service through a separate affiliate be eliminated immediately.⁵⁴ USTA has discussed with Commission staff the cost savings that result when independent ILECs are able to use the same equipment and personnel for both local exchange and interexchange services.⁵⁵ There is no evidence before the Commission of any anti-competitive implications of allowing independent ILECs to offer long distance services within their service territories. Rather, the Commission's decision to impose this requirement relied solely on a "potential" for improper behavior as justification. This is a weak justification for imposing such a burdensome and unnecessary requirement on the smallest independent ILECs that must compete against unregulated global companies such as AT&T and Sprint to provide interexchange service.

⁵⁴ See USTA Comments at 29.

⁵⁵ See Letter to William F. Caton, Acting Secretary, Federal Communications Commission, from Lawrence E. Sarjeant, USTA regarding *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, CC Docket Nos. 96-149 and 00-175 (Feb. 22, 2002).

PART 65 – INTERSTATE RATE-OF-RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

USTA continues to support streamlining the Part 65 rules to reduce the regulatory burdens that these rules impose on all ILECs.⁵⁶ Reporting requirements should be eliminated except when a lower formula adjustment is filed. Services that are excluded from price cap regulation should not be subject to the prescribed rate of return. The Commission should modify Section 65.700 of the Commission's Rules to calculate the maximum allowable rate of return on all access elements in the aggregate instead of for each access category and should modify Section 65.702 of the Commission's Rules to measure earnings on an overall interstate basis instead of separately for each access category.

⁵⁶ See USTA Petition at 41; *see also* USTA Comments at 31.

PART 69 – ACCESS CHARGES

USTA continues to recommend revising Part 69 so that it applies only to rate-of-return carriers.⁵⁷ In addition, USTA still maintains that Section 69.4 should be deleted, thereby eliminating detailed rate element codification and public interest petition requirement for the establishment of new rate elements.⁵⁸ This will facilitate innovation and accelerate the delivery of new service options to the customers of rate-of-return carriers.

⁵⁷ See USTA Comments at 22.

⁵⁸ *Id.* at 33.

III. CONCLUSION

The recommendations for action contained in the FCC Report and the Staff Report are insufficient. Convergence in communications offerings has rendered many current rules obsolete, such that they no longer serve the public interest. Yet, the Commission has failed to eliminate these rules expeditiously. Removing regulatory burdens and avoiding the imposition of new burdens on ILECs will permit these carriers to serve their customers in a more cost-effective and efficient manner and will provide the appropriate incentives to encourage investment in the telecommunication infrastructure. USTA urges the Commission to take a more aggressive approach to fulfilling its commitment to rely on market forces rather than regulation to enhance the development of economically efficient and fair competition.

Respectfully submitted,

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October 18, 2002